

OFFICE OF PROFESSIONAL RESPONSIBILITY
INTERNAL REVENUE SERVICE
DEPARTMENT OF THE TREASURY
WASHINGTON, DC

November 27, 2007

Director, Office of Professional Responsibility, Complainant-Appellee)	
)	
v.)	Complaint No. 2004-11
)	
Thomas Edward Settles, Respondent-Appellant)	
)	
)	

DECISION ON REMAND

This matter is before me on remand from the Secretary of the Treasury, *Director, Office of Professional Responsibility v. Thomas Edward Settles*, Complaint No. 2004-11 (October 5, 2007) (Initial Decision on Appeal). The case was remanded to reconsider Count 5 of the Complaint, and to reconsider an appropriate sanction in view of the new findings on Count 5 and the fact that Count 11 was dismissed. *Id.* at 20.¹ For the reasons set forth below, Count 5 is dismissed and the Respondent is disbarred from further practice before the Internal Revenue Service (IRS).

The original disciplinary complaint against Settles contained 14 counts alleging various violations of the Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers before the Internal Revenue Service. 31 C.F.R. Part 10. A hearing in the matter was held in Nashville, Tennessee, and a decision was issued sustaining 12 of the 14 counts and disbarring Settles.² *Director, Office of Professional Responsibility v. Thomas Edward Settles*, Complaint No. 2004-11 (March 2, 2006).

The Initial Decision on Appeal affirmed the findings with regard to Counts 1, 2, 3, 4, 7, 8, 9, 10, 12 and 14, reversed the findings with respect to Count 11, vacated and remanded the findings with regard to Count 5, and vacated and remanded the question of the appropriate sanction to impose on Settles, in light of the charges ultimately sustained.

¹ The Initial Decision on Appeal apparently contains a typographical error since it states that it is vacating and remanding "the ALJ's findings with regard to Count 13." *Id.* However, Count 13 was dismissed in the original decision and was not appealed. Further, the appellate decision states in the body that Count 5 is being vacated and remanded. *Id.* At 15-16.

² Counts 6 and 13 were dismissed.

Initial Decision on Appeal at 20. Count 5 alleged that Settles failed to timely pay the taxes due on his U.S. Individual Income Tax Return (Form 1040) for 2001 and that such conduct violated section 10.51 (1994) of the regulations, 31 C.F.R. § 10.51. The Initial Decision on Appeal held that to prove this violation the burden was on the Director to show that Settles had the ability to pay his taxes and that the Director had failed to do so. *Id.* at 16. Therefore, the charge was vacated and remanded

to the ALJ so that he can determine whether he requires Complaint-Appellee to introduce additional evidence on Respondent-Appellant's ability to pay, or whether he is prepared to reach a finding on that point on the basis of evidence already in the record.³

Id.

After a careful review of the evidence in this matter, I can find nothing to indicate that Settles either had the capacity to pay his 2001 taxes when due or at some later time, or that his inability to pay his taxes was the result of voluntary and intentional act without legal justification. However, it does not appear appropriate at this late date to permit the Director to submit additional evidence on the issue, having failed to do so at the proper time. Accordingly, I find that the Director has not proven Count 5 and will dismiss the charge.

Turning to the question of an appropriate sanction, in my original decision, I stated:

For most of his career as an attorney and certified public accountant, Settles has practiced before the Internal Revenue Service. In the 1990's he developed a patently fraudulent tax strategy to avoid paying the taxes he would normally have owed. He first did this with his own taxes and then marketed the scheme to other tax payers, to encourage and advise them to defraud the government. Clearly, one who seeks to undermine the tax system should not be permitted to practice before the agency administering the tax system. The use and marketing of the abusive tax shelter requires nothing less than the ultimate sanction of disbarment.

Decision at 19. The dismissal of Counts 5 and 11 do not change this view at all. The ten remaining counts clearly demonstrate that Settles is not fit to practice before the IRS.

³ Of course, either the Complainant-Appellee is free to withdraw this charge, [or] the ALJ is free not to consider it and have the case considered solely on the basis of the 10 Counts where I have affirmed the findings of the ALJ.

Order

In compliance with the instructions on remand, it is **ORDERED** that Count 5 is **DISMISSED** and that the Respondent-Appellant, Thomas Edward Settles, be **DISBARRED** from practicing before the Internal Revenue Service.

T. Todd Hodgon

T. Todd Hodgon
Administrative Law Judge